



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/ 24UP/LDC/2020/0023

Property : The Malms, Shawford Road, Shawford,
Winchester SO21 2BG

Applicant : The Malms House Ltd

Representative : B W Residential Ltd

Respondent : -

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 20 April 2020

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the sewage treatment plant

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that repairs are required to the sewage treatment plant following high readings obtained from the Environment Agency and the need to avoid legal action should the River Itchen become polluted.
3. Leaseholders have been made aware, two quotations have been received and a contract awarded for the cheaper quote.
4. The Tribunal made Directions on 10 March 2020 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. The Applicant was required to serve the Directions on the Respondents and confirm that it had done so. Attached to the directions was a form for the Respondents to indicate whether they agreed with or objected to the application.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. By email on 17 March 2020 Mr Jamie Fisk a Director of BW Residential Ltd confirmed that the Tribunal's Directions had been sent to all Respondents
7. No replies objecting to the application have been received and the lessees have therefore been removed as Respondents as referred to above.
8. No requests for an oral hearing have been received and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal Procedural Rules 2013.
9. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

The Law

10. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- a. Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
11. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following
- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - ii. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
 - vi. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - vii. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- viii. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

12. In accordance with Directions a determination bundle has been provided by the Applicant containing their Statement of Case, a report from the Environment Agency concerning water quality, details of the work carried out and correspondence with leaseholders.

Determination

13. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
14. It is clear that the works to prevent further pollution of a water course due to failure of the sewage treatment plant should be carried out without delay and no lessee has objected. No evidence of prejudice as considered in the Daejan case referred to above has been identified.
- 15. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the sewage treatment plant**
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS

20 April 2020

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal

sends to the person making the application written reasons for the decision.

2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the appeal is seeking.